



PEPFAR

U.S. President's Emergency Plan for AIDS Relief

Protecting Life in Global Health Assistance and other abortion-related restrictions

PEPFAR Inter-Agency US Government Field Training

August 15, 2017

Agenda

1. Overview
2. Policy Restriction: Protecting Life in Global Health Assistance
3. Statutory Restrictions on Abortion
4. Ensuring Agency Compliance
5. Resources

Note: USAID will facilitate the majority of the training, providing USAID examples, though PLGHA applies to all global health assistance furnished by all departments or agencies.

GENERAL OVERVIEW – Key Messages

- On January 23, 2017, President Trump issued a Presidential Memorandum reinstating the 2001 Presidential Memorandum on the "Mexico City Policy," and directing the Secretary of State to implement a plan to extend the Mexico City Policy to "global health assistance furnished by all departments or agencies."
- On May 15, 2017, after a thorough review process involving senior level staff from all relevant U.S. government agencies, Secretary Tillerson approved a plan to implement the manner in which U.S. Government Departments and Agencies will apply the provisions of the Mexico City Policy to foreign non-governmental organizations (NGOs) that receive U.S. funding for global health assistance.
- The policy, now known as *Protecting Life in Global Health Assistance*, went into effect on May 15, 2017, fulfilling the President's directive that no U.S. taxpayer money should be used to support foreign organizations that perform or actively promote abortion as a method of family planning in other nations.
- Under this expanded policy, "global health assistance" includes funding for international health programs, such as those for HIV/AIDS, maternal and child health, malaria, global health security, and family planning and reproductive health. *Protecting Life in Global Health Assistance* applies to global health assistance to, or implemented by, foreign NGOs, including those to which a U.S. NGO makes a sub-award with such assistance funds.
- Global health assistance to national or local governments, public international organizations, and other similar multilateral entities is not subject to this policy. This includes funding to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Joint United Nations Programme on HIV/AIDS, and the World Health Organization. Also excluded is humanitarian assistance, including State Department migration and refugee-assistance activities, USAID disaster and humanitarian-relief activities, and U.S. Department of Defense disaster and humanitarian relief.
- Once all appropriate steps have been taken, the policy will apply to all new funding agreements (grants, cooperative agreements and contracts) for global health assistance, and to existing agreements when amended to add funding.
- All foreign NGOs will have the opportunity to receive global health assistance awards if they indicate their agreement to abide by the terms of *Protecting Life in Global Health Assistance* by accepting the provisions in their award.
- The U.S. government remains deeply committed to supporting health programs around the world. *Protecting Life in Global Health Assistance* does not reduce the amount of global health assistance the U.S. Government makes available, and funding previously obligated will not be affected as a result of this policy.
- U.S. government Departments and Agencies will reprogram to other organizations any funding they would have awarded to NGOs that do not agree to the conditions set on the acceptance of U.S. funding under *Protecting Life in Global Health Assistance*.
- Given the expansive nature of the new policy, the Department will undertake a thorough and comprehensive review of the effectiveness and impact of the policy's application over the next six months, which could include identifying implementation issues, and any other new information affecting implementation going forward. Newly covered programs, including U.S. President's Emergency Plan for AIDS Relief, the President's Malaria Initiative, and other global health programs, will be given special attention under this review.

Statutory vs. Policy Restrictions

USAID has statutory **and** policy restrictions relating to abortion.

Statutory restrictions are established in laws passed by the U.S. Congress.

- compliance is *mandatory*
- the statutory restrictions (e.g., Helms Amendment) apply to all USAID funds, not just funds for specific activities

Policy restrictions reflect the Administration's priorities and implementation guidance.

- compliance is *mandatory*
- the policy restriction, known as the Protecting Life in Global Health Assistance applies to a foreign non-governmental organization's activities as a whole

Vulnerability vs. Violation

Vulnerability

→ Occurs when circumstances within programs are such that, without modification of procedures, clarification, or careful monitoring, there exists a risk of a violation in the future

Violation

→ Occurs when an action taken directly contradicts a requirement

Applicability of the Restrictions

Foreign NGOs

Protecting Life in
Global Health
Assistance: FNGOs
agree as a condition
of receiving global
health assistance

Policy: all
sources of
funds
including non-
USG sources

U.S. NGOs

Protecting Life in
Global Health
Assistance: U.S.
NGOs are not subject
to policy's conditions,
must agree to flow
down to foreign sub-
recipients

Statutory: all USG funds
Helms, Leahy, Siljander, Biden

Abortion Restrictions

It is important to understand the host country's laws on abortion. What is the legal status of abortion in the countries in which you work?

- Is it legal or illegal?
- Are exceptions permitted? If so, under what conditions?
- Are there efforts underway to change the legal status of abortion?

POLICY RESTRICTION:

Protecting Life in Global Health Assistance

Protecting Life in Global Health Assistance: Overview

- Requires foreign non-governmental organizations (NGOs) to agree, as a condition of receiving global health assistance, that they will not perform or actively promote abortion as a method of family planning or provide financial support to any other foreign NGO that conducts such activities.
- Applies to any activities of the organization, including activities conducted with U.S. funding or with other money, public or private.
- USAID is implementing the policy through a new standard provision, “Protecting Life in Global Health Assistance (May 2017)” (available in ADS 303)
 - Replaces “Mexico City Policy (March 2017)” standard provision

Protecting Life in Global Health Assistance: Background

- “Protecting Life in Global Health Assistance” (2017-present)
 - Presidential Memorandum of January 23, 2017, extends the policy to any global health assistance from any U.S. Department or Agency to the extent allowable by law.
 - Secretary Tillerson approved a plan to implement the manner in which U.S. Government Departments and Agencies will apply the provisions of the “Mexico City Policy” to global health assistance.
- “Mexico City Policy” (1984-1993, 2001-2009)
 - Required foreign NGOs to agree that they would not “perform or actively promote abortion as a method of family planning” as a condition for receiving USAID family planning assistance.
 - Reinstated by Presidential Memorandum of January 23, 2017.

Protecting Life in Global Health Assistance: Timeline

DATE	EVENT
January 23, 2017	Presidential Memorandum
March 2, 2017	"Mexico City Policy (March 2017)" standard provision issued for USAID family planning assistance
May 9, 2017	Secretary Tillerson approved a plan to extend MCP to global health assistance by all Departments and Agencies
May 15, 2017	"Protecting Life in Global Health Assistance (May 2017)" standard provision issued for USAID global health assistance (replaces March 2 provision)

What kinds of assistance does it apply to?

- Funding for international health programs, such as:
 - HIV/AIDS, maternal and child health, malaria, global health security, and family planning and reproductive health.
- For USAID, this means global health activities funded from the GHP, ESF, and AEECA accounts.
- Applies to the provision of funds, commodities, equipment or other in-kind assistance to a foreign non-governmental organization.
- Excludes humanitarian assistance, including USAID disaster and humanitarian-relief activities.

What kinds of entities does it apply to?

YES



- Foreign NGOs

NO



- U.S. NGOs*
- Public International Organizations (PIOs) and other multilateral entities in which sovereign nations participate
- Governments

* U.S. organizations are required to flow down the provision to foreign non-governmental sub-recipients that receive global health assistance.

What kinds of instruments does it apply to?

- Applies to cooperative agreements, grants, grants under contract. The standard provision must be included in:
 - All new USAID grants and cooperative agreements that provide global health assistance,
 - All existing USAID grants and cooperative agreements that provide global health assistance when such agreements are amended to add new (incremental) funding, and
 - All existing agreements that previously received the Mexico City Policy (March 2017) standard provision at the time of the next award modification or as soon as reasonably practicable.
- Will apply to contracts
 - The Interagency is taking the necessary steps to include a similar provision in certain types of contracts for global health assistance.
 - Until that process is complete, the policy will not apply to contracts that provide global health assistance.

Which activities does the policy cover?

All activities implemented by the foreign NGO, including activities funded with non-USAID sources.

Prohibited activities:

- Performing abortion as a method of family planning
- Actively promoting abortion as a method of family planning
- Providing financial support to any other foreign NGO that conducts activities described above

Key Definitions

“Protecting Life in Global Health Assistance (May 2017)”
standard provision includes specific information about the policy’s conditions, key definitions, and procedures for ensuring compliance

“Foreign non-governmental organization” – a for profit or not-for-profit non-governmental organization that is not organized under the laws of the United States

“Furnish health assistance” – includes the transfer of funds, or goods or services financed with such funds, but does not include:

- purchase of goods or services from an organization
- participation of an individual in the general training programs of the recipient or sub-recipient.

Key Definitions

“Abortion as a method of family planning” – for the purpose of spacing births, i.e. abortion performed for any reason other than to save the life of the mother or in cases of rape or incest. This includes:

- for the physical or mental health of the mother
- due to fetal abnormalities
- menstrual regulation

“To perform abortions” – to operate a facility where abortions are provided as a method of family planning.

Key Definitions

“To actively promote abortion” – providing advice or information that abortion as a method of family planning is an available option, including

- counseling including advice and information on the benefits and availability of abortion
- providing referrals for abortion services (excluding passive referral)
- lobbying a foreign government to legalize or make available abortion as a method of family planning
- conducting public information campaigns

Key Provisions

Passive referral is allowed but must meet all of these conditions:

- the woman is already pregnant,
- the woman has clearly stated intention to have a legal abortion,
- the woman asks where it can be legally obtained, and
- medical ethics require a response.

Affirmative Duty of Healthcare Provider exception:

- Where the provider is required by local law to provide counseling about or referrals for abortion as a method of family planning, compliance with such law does not trigger a violation of the policy
- Exception is not available where the provider is allowed, but not required, by local law to provide such counseling or referrals
- Missions should consult with USAID on this provision

Exclusions

Excluded from the definition of abortion as a method of family planning:

- If the life of the mother would be endangered if the fetus were carried to term.
- Following rape or incest.

Treatment of injuries or illnesses caused by legal or illegal abortions (Post Abortion Care or PAC) is permitted under the Protecting Life in Global Health Assistance Policy

Knowledge Check: Stoplight Scenarios

Key for Stoplights



Red: This poses a serious vulnerability or potential violation. Inform your RLO and the USAID/W compliance team immediately.

Yellow: More information is needed or the situation requires increased monitoring and coordination.

Green: This doesn't pose a vulnerability or a violation.

Knowledge Check: Stoplight Scenario (1)

Healthy Families Clinic, a foreign NGO, receives USAID support for comprehensive HIV care and treatment. The Healthy Families Clinic provides information and counseling about legal abortion as an available pregnancy option.

Knowledge Check:

Stoplight Scenario (2)

USAID/Westeros provides funds to Terra, Inc., a local organization. Terra, Inc. uses those funds to provide technical assistance within a network of private sector clinics to scale up prevention of mother-to-child transmission services. As part of the package of services, the private sector clinics provide referrals on all pregnancy options, including legal abortion services.

Knowledge Check:

Stoplight Scenario (3)

The law in Freedonia is currently changing to allow for abortions in cases where the physical health of the mother is endangered. The Freedonia Association of Obstetricians (FAO) currently receives funds from USAID/Freedonia to strengthen their MCH advocacy work. The Ministry of Health of Freedonia recently asked FAO to help revise guidelines regarding abortion in Freedonia.

STATUTORY RESTRICTIONS



Photo Credit: Tobin Jones/Jhpiego

What do these restrictions apply to?

Funds

- These restrictions apply to all U.S. foreign assistance funds, not just health funds. They do not apply to activities funded with non-USG sources.
- However, foreign NGOs must adhere to Protecting Life in Global Health Assistance restrictions.

Entities

- These requirements apply to all entities that receive U.S. foreign assistance funding, including NGOs, governments, and PIOs.

Instruments

- All agreements including grants, cooperative agreements, and contracts.

Which activities do the statutory restrictions cover?

- USG/USAID funds cannot be used to:
 - Perform abortion as a method of family planning.
 - Motivate or coerce people to practice abortions.
 - The term “motivate,” as it relates to family planning assistance, does not prohibit the provision, consistent with local law, of information or counseling about all pregnancy options
 - However, foreign NGOs must adhere to the Protecting Life in Global Health Assistance Policy, which prohibits actively promoting abortion as a method of family planning, which includes counseling and referrals

Helms Amendment

Leahy Amendment

Which activities do the statutory restrictions cover?

- USAID funds cannot be used to:
 - Lobby for or against abortion.
 - Pay for biomedical research related to abortion.
 - But, epidemiologic or descriptive research to assess the trends in incidence, extent or consequences of abortions is permitted.

Siljander Amendment
Biden Amendment

Post-Abortion Care (PAC)

- USAID funds can be used for post-abortion care (PAC).
- USAID defines PAC to encompass:
 - Emergency treatment for complications of induced or spontaneous abortion
 - Counseling on and provision of FP options
 - Community empowerment through community awareness and mobilization
- Review the Global Health Programs Account Guidance for more specific information about PAC policies.

Applicability of the Restrictions

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Interactive Scenario

Smart&Healthy Inc., an international NGO, provides a range of reproductive, maternal, and child health services

Smart&Healthy receives USAID global health assistance to implement an integrated FP-HIV project

Smart&Healthy also receives funding from other donors to provide other reproductive health services, including screening cervical cancer and gender-based violence; testing and treatment of STIs; and safe abortion services.

Interactive Scenario

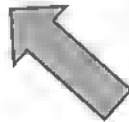
Prior to implementation of Protecting Life in Global Health Assistance

Smart&Healthy's Activities

USG Funds

Implement integrated FP-HIV project

Statutory abortion restrictions:
Helms, Leahy, Biden, Siljander



Statutory abortion
restrictions apply to USG
funds

Other Sources of Funds

Provide other reproductive health services, including screening for cervical cancer and gender-based violence; testing and treatment of STIs; and safe abortion services.

Interactive Scenario

After implementation of Protecting Life in Global Health Assistance

Smart&Healthy's Activities

USG Funds

Implement integrated FP-HIV project

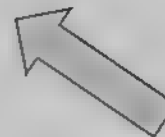
Statutory abortion restrictions:
Helms, Leahy, Biden, Siljander

Other Sources of Funds

Provide other reproductive health services, including screening for cervical cancer and gender-based violence; testing and treatment of STIs; and safe abortion services.

Policy Requirement: Protecting
Life in Global Health Assistance

**The policy is an
organizational
requirement**



Do not distribute

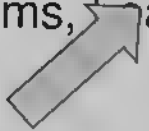
Interactive Scenario

If the FNGO does not agree to the policy's conditions

Smart&Healthy's Activities

USG Funds

Implement integrated FP-HIV project

Statutory abortion restrictions:
Helms,  ahy, Biden, Siljander

**Cannot receive
additional GHA funds**

Other Sources of Funds

Provide other reproductive health services, including screening for cervical cancer and gender-based violence; testing and treatment of STIs; and safe abortion services.

~~Policy Requirement: Protecting
Life in Global Health Assistance~~

Do not distribute

Interactive Scenario

If the FNGO does agree to the policy's conditions

Smart&Healthy's Activities

USG Funds

Implement integrated FP-HIV project

Statutory abortion restrictions:
Helms, Leahy, Biden, Siljander

Other Sources of Funds

Provide other reproductive health services, including screening for cervical cancer and gender-based violence; testing and treatment of STIs; and ~~safe abortion services.~~

Policy Requirement: Protecting
Life in Global Health Assistance

**The policy is an
organizational
requirement**

Do not distribute

ENSURING COMPLIANCE WITH THE USG REQUIREMENTS & AGENCY- SPECIFIC COMPLIANCE



Preventive Actions

Know the requirements

- Discuss with colleagues & partners and assess awareness
- Provide training (e-learning and/or in-person) to staff, with emphasis on reaching new staff
- Create & adapt informational materials
- Review agreements for appropriate clauses

Identify potential vulnerabilities

- Which requirements apply?
- What vulnerabilities exist?

Develop a compliance plan

Monitoring Activities

Monitoring activities should be regular and ongoing

- Incorporate compliance into routine project monitoring activities and quality of care monitoring and supervision
- Opportunities for monitoring:
 - Field visits
 - Team/project meetings
 - Review reports/records
 - Observation

Monitoring activities should be documented using standardized forms, and should be included in compliance files

Response Procedures

If you think there may be a serious vulnerability or violation of these requirements:

- Inform the USAID/Washington and GH Compliance Team (and the USAID partner) immediately.
- USAID will discuss the situation with you and determine what the next steps are.
- USAID will work with you to determine what corrective actions must be taken in the program.

Roles and Responsibilities

- For USAID Staff
 - Read the “Protecting Life in Global Health Assistance (May 2017)” standard provision and familiarize yourself with the format, the policy’s conditions, and procedures for responding to compliance issues
 - Communicate with Office/Bureau POC and the GH Compliance Team on the policy
 - Communicate regularly with implementing partners
 - Know the host country’s laws and policies
 - Regularly monitor for and document compliance
 - Work with Resident Legal Officer (RLO) on these issues
 - Review agreements for correct standard provisions

Roles and Responsibilities

- For Implementing Partners
 - Read the “Protecting Life in Global Health Assistance (May 2017)” standard provision
 - Maintain documentation of project compliance activities
 - Communicate requirements to sub-recipients, field staff, and front-line service providers
 - Communicate with AOR or activity manager
 - Ensure compliance among sub-awardees
 - Develop compliance-related tools
 - Monitor project activities

Resources

- Presidential Memorandum: <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy>
- Department of State Fact Sheet
<https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm>
- USAID Executive Notices:
<https://notices.usaid.gov/notice/46867>
<https://notices.usaid.gov/notice/47290>
- “Protecting Life in Global Health Assistance (May 2017)”
Standard Provision
<https://www.usaid.gov/sites/default/files/documents/1868/303maa.pdf>
<https://www.usaid.gov/sites/default/files/documents/1868/303mab.pdf>
- E-Learning coming soon

HHS IMPLEMENTATION OF PLGHA

HHS awarding agencies administer grants in accordance with HHS' Uniform Administrative Requirements, Cost Principles, and Audit Requirements found at 45 CFR Part 75.

- PLGHA applicability under HHS Awards:
 - Foreign non-governmental organizations (NGOs) receiving HHS global health assistance either directly from HHS as a recipient, from a non-governmental pass-through entity, or as a subrecipient of a domestic or other foreign NGO. Global health assistance to national or local governments, public international organizations, and other similar multilateral entities is not subject to this policy.
- PLGHA compliance for new and existing HHS Awards:
 - HHS Standard PLGHA language will be published in all new global health assistance Notice of Funding Opportunities (NOFOs) effective June 1, 2017.
 - Notices of Awards (NoAs) may either include the entire PLGHA HHS Standard Provision, or include a statement in the NoA with a description of the PLGHA and its direct applicability to the funding award, and include a link to the Standard Provision either on the OPDIV's grants website or the OGAPA grants website.

HHS IMPLEMENTATION OF PLGHA

- The PLGHA HHS Standard Provision will have to be inserted into all new awards that are funded with foreign assistance money, including non-competing continuation, competitive renewal, and supplemental awards issued after June 1, 2017.
- Recipients and subrecipients signify their acceptance of all terms and conditions of the NoA the moment they first drawdown funds.
- Should a recipient or subrecipient not accept the terms and conditions of the PLGHA policy, their award will be terminated in accordance with the processes outlined in 45 CFR 75.371–.375.

HHS IMPLEMENTATION OF PLGHA

PLEASE DIRECT ALL QUESTIONS TO THE : HHS Points of Contact

- OGAPAs Division of Grants
 - Jeffrey D. Johnson, Associate Deputy Assistant Secretary, Division of Grants
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A FAQ document will be maintained and updated
on the OGAPA HHS Intranet site.